

P3 Implementation Manual and Guidelines Pursuant to 74 Pa.C.S. § 9104(a)(2)

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1. DEFINED TERMS

These definitions are applicable to capitalized terms contained in the Pennsylvania Department of Transportation's Public-Private Partnership Transportation Project Implementation Manual and Guidelines:

Best Value means the overall combination of quality, price, schedule and various elements of required services that, in total, provide the highest relative worth for the Public Entity's needs.

Best Value Analysis means an analysis conducted by the Department in which the development of a Transportation Project as a P3 is evaluated against the delivery of the project under a different approach. A value for money analysis is a specific type of Best Value Analysis that may be required under federal law.

Best Value Proposal means the Responsive Proposal submitted by a Private Entity that has been determined by the Department or Public Entity to provide the Best Value.

Best Value Proposer means a Private Entity that has submitted a Responsive Proposal that has been determined by the Department or Public Entity to provide Best Value.

Commonwealth means the Commonwealth of Pennsylvania.

Department means the Commonwealth of Pennsylvania, Department of Transportation.

Development Entity means an entity which is a party to a Public-Private Transportation Partnership Agreement and which is any of the following: (1) a Private Entity; or (2) a Public Entity, other than the Public Entity providing or improving its own Transportation Facilities.

Nationally Recognized Statistical Rating Organization or NRSRO means credit rating agency which is registered with the United States Securities and Exchange Commission and provides its opinion on the creditworthiness of an entity and the financial obligations (such as, bonds, preferred stock, and commercial paper) issued by an entity.

Offeror or Proposer means a person or entity that submits a Proposal or a response in answer to a Request for Qualifications or Request for Proposals.

Optional User Fee is a user fee that is optional to the user and is only imposed on individuals who select optional means to utilize the transportation facility, including, without limitation, limited access lanes.

Private Entity means a person, entity, group or organization that is not the Federal Government, the Commonwealth or a municipal authority.

Proposal means the documents submitted by a Proposer in response to an RFP issued by the Department or a Public Entity.

Proprietary Public Entity means a Public Entity which owns a Public-Private Transportation Project and which is a party to a Public-Private Transportation Partnership Agreement.

Public Entity means a Commonwealth agency as defined in 62 Pa.C.S. § 103, a municipal authority or an authority created by statute which owns a Transportation Facility. The term does not include the General Assembly and its members, officers or agencies of any court or other office or agency of the Pennsylvania judicial system.

Public-Private Partnership (P3) Implementation Manual & Guidelines or Implementation Manual means this manual.

Public-Private Transportation Partnership Agreement means a contract for a Transportation Project which transfers the rights for the use or control, in whole or in part, of a Transportation Facility by a Public Entity to a Development Entity for a definite term during which the Development Entity will provide the Transportation Project to the Public Entity in return for the right to receive all or a portion of the revenue generated from the use of the Transportation Facility, or other payment, such as transportation related services.

Public-Private Transportation Partnership Board or P3 Board means the P3 board established pursuant to the P3 Law for the purpose of providing the review and approval of a proposed transportation project.

Public-Private Transportation Partnership Law or P3 Law means Act 88 of 2012, as amended by Act 89 of 2013 and Act 84 of 2022, 71 Pa.C.S. §§9101-9124.

Public-Private Transportation Project or P3 Project means a Transportation Project undertaken by a Development Entity pursuant to a Public-Private Transportation Partnership Agreement.

Request for Information or RFI means a document released to the public and industry partners to gather information about a potential project or to obtain information about potential levels of interest in a project or project delivery approach.

Request for Proposal or RFP means all documents, including those either attached or incorporated by reference, utilized for soliciting proposals, which shall at a minimum, identify the Transportation Project and the work to be performed.

Request for Qualifications or RFQ means all documents, including those either attached or incorporated by reference, utilized for soliciting Statements of Qualification.

Responsible Offeror means an Offeror that has submitted a Responsive Proposal and that possesses the capability to fully perform the requirements of the Public-Private Transportation Partnership Agreement in all respects and the integrity and reliability to assure good faith performance.

Responsive Proposal means a Proposal that conforms in all materials aspects to the requirements and criteria in the Request for Proposals.

Solicited Project means a Transportation Project developed and procured by the Department or a Public Entity through the issuance of an RFQ and/or RFP to provide a Transportation Project in accordance with the P3 Law.

Statement of Qualifications or SOQ means the documents submitted by a Private Entity or Public Entity, other than the Public Entity providing or improving its own Transportation Facilities, in response to an RFQ issued by the Department or a Public Entity.

Transportation Facility means a proposed or existing road, bridge, tunnel, overpass, ferry, busway, guideway, public transportation facility, vehicle parking facility, port facility, multimodal transportation facility, airport, station, hub, terminal or similar facility used or to be used for the transportation of persons, animals or goods, together with any buildings, structures, parking areas, appurtenances, intelligent transportation systems and other property needed to operate or related to the operation of the Transportation Facility. The term includes any improvements or substantial enhancements or modifications to an existing Transportation Facility.

Transportation Project also a **P3 Transportation Project** or **P3 Project** means an undertaking by a Private Entity or a Public Entity, other than the Public Entity providing or improving its own Transportation Facilities, to provide or improve a Transportation Facility or Transportation-Related Service which is totally or partially located within this Commonwealth.

Transportation-Related Service means only the following services: (1) operation and maintenance; (2) revenue collection; (3) Optional User Fee collection or enforcement; (4) design; (5) construction; (6) development and other activities with respect to existing or new transportation facilities that enhance traffic throughput, reduce congestion, improve safety or otherwise manage or improve a transportation facility; (7) financing.

Unsolicited Project means a Transportation Project submitted by a Private Entity or Public Entity not in response to an RFQ or RFP.

Unsolicited Proposal means a proposal to provide a Transportation Project submitted by a Private Entity or Public Entity not in response to an RFQ or RFP.

2. INTRODUCTION

The P3 Law, 74 Pa.C.S. §§ 9101-9124, is a statutory tool that enables the Department and other Public Entities to enter into agreements with the public or private sector to participate in the delivery, maintenance and financing of transportation related projects. For reference, the text of the P3 Law is attached to this Implementation Manual as Exhibit A.

2.1 Purpose of the Public-Private Partnership (P3) Implementation Manual & Guidelines

The P3 Implementation Manual & Guidelines (“Implementation Manual”) provides guidance regarding Public-Private Transportation Project development and implementation in the Commonwealth. This guidance applies to both solicited and unsolicited Transportation Projects across all modes including multi-modal and intermodal. The Public-Private Transportation Partnership Board approves this Implementation Manual for use in the Commonwealth. The processes outlined in this document shall be followed by all Public Entities that seek to advance a P3 project.

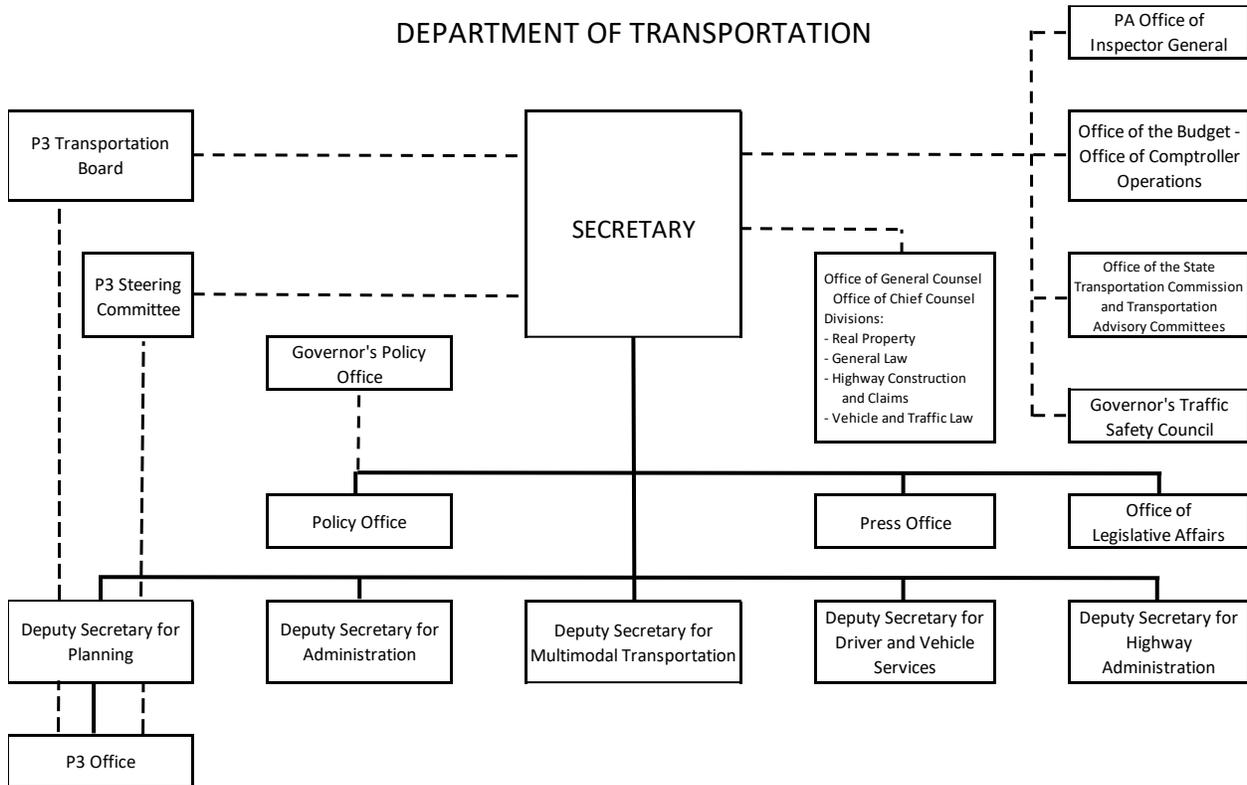
The P3 Board recognizes that each P3 Project is unique and that certain elements set forth in this Implementation Manual may not apply in all circumstances and may be subject to change as deemed appropriate by the P3 Board in certain circumstances. This Implementation Manual may be periodically revised or updated in order to meet the mission of the P3 Board and the objectives of the P3 program. Revisions can be made based on the recommendations of the Department’s Office of Public-Private Partnerships in consultation with the Secretary and subject to approval by the P3 Board.

This Implementation Manual does not modify or supersede the requirements of the P3 Law.

3. ORGANIZATION

3.1 Organizational Structure

The P3 Office reports directly to the Deputy Secretary for Planning with access to all the expertise and resources of the Department covering all modes, including multi-modal and intermodal solutions.



The P3 Office and its Director report directly to the Deputy Secretary for Planning with regard to policy implementation. The P3 Office works directly with the respective Deputy or appropriate agency administrator based on the particular mode and at times this may include impacted Public Entities outside the Governor’s jurisdiction. For example, on a road or bridge project, the P3 Director works with the Deputy Secretary for Highway Administration, and on a project involving the Pennsylvania Turnpike Commission, the Director may work directly with its CEO.

3.2 P3 Office

3.2.1 P3 Office Director

The P3 Office Director is responsible for overseeing all aspects of the P3 program, from identifying, screening, and developing candidate P3 Projects for approval by the P3 Board to further development, procurement, and contract management. This includes P3 program

outreach and stakeholder coordination and reporting all program and project activities to the Secretary of Transportation and the P3 Board.

Additionally, the P3 Office Director is responsible for working collaboratively with other public agencies and the private sector regarding the program and projects; complying with applicable statutes, regulations, and policies; and ensuring that external stakeholders, such as impacted transportation modes, local stakeholders, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Maritime Commission (FMC), and the Office of Chief Counsel (OCC) are adequately represented during the various stages of project identification, screening, development, procurement and implementation processes, as and when appropriate. For projects under the Governor's jurisdiction, the P3 Office Director, in consultation with the Agency Administrator and appropriate executive-level staff, is empowered to represent the Commonwealth in the development of commercial terms in discussion with Private Entities or Public Entities which are seeking to carry out Transportation Projects in the capacity of a Development Entity.

The P3 Office Director, supported by a multidisciplinary program staff, is responsible for delivering key functions, including P3 Project screening, developing and delivering P3 Projects across all modes and contract management for ongoing P3 Projects under the Governor's jurisdiction. The P3 Office Director works closely with the Press Secretary or similar officer of the Commonwealth's transportation agencies and local jurisdictions, as appropriate, to facilitate public understanding and support for P3 Projects. Additionally, the P3 Office Director collaborates with Private Entities, the Commonwealth's transportation agencies, Planning Organizations and other groups for developing appropriate communication strategies for the P3 Program.

For approved P3 projects that fall under the jurisdiction of Public Entities outside the Governor's jurisdiction, the P3 Director takes on an oversight, and as requested, a technical support role, with the Public Entity maintaining direct control of procurement and project delivery.

3.2.2 P3 Office Deputy Director

The Deputy Director of the P3 Office reports directly to the P3 Office Director and is responsible for providing a high level of support to assist the P3 Office Director with all aspects of the P3 Office including, program management, project development and administration of the Public-Private Transportation Partnership Board. The Deputy Director is responsible for consulting with the P3 Office Director and the Secretary on all aspects of the program, from identifying, screening and prioritizing candidate P3 projects for approval by the Board to development, procurement, and contract management. This includes program outreach, stakeholder coordination and reporting program and project activities to the P3 Board.

Other duties of the Deputy Director include: participation in P3 and associated industry organizations; working collaboratively with internal stakeholders within the Department; assisting the P3 Director with the management of projects, staff and consultants engaged to

assist the P3 Office; evaluating private sector recommendations for P3 initiatives; advancing the Commonwealth's objectives to promote economic development, sound land use, and effective long-range transportation planning through the implementation of P3 projects; managing projects and P3 initiatives in a manner that is consistent with the P3 Law and this Implementation Manual; evaluating "best practices" utilized by other states and jurisdictions; providing recommendations for modernization and process improvement to the Director; assimilating objectives of Department and interagency programs related to the P3 program; and representing the Department, the Secretary and the P3 Director on task forces, boards, committees, and commissions.

3.2.3 P3 Office Responsibility for Project Screening

The P3 Office leads the P3 project screening effort. The project screening function includes coordination with the relevant Agency's planning division, evaluation of short- and long-term transportation plans and application of detailed screening criteria to a specific project or group of candidate Transportation Projects. If there are multiple projects in the screening process, the P3 Office works with the Department and relevant Public Entities to prioritize projects for screening based on a consideration of Commonwealth policy, priorities and objectives; available public funding; market timing; public comment; availability of human resources; and current level of project development. Additionally, the project screening function culminates in making a recommendation to the P3 Board about whether to move forward with a particular project utilizing the P3 delivery method. More details regarding the Project Screening process are included in Section 5 of this Implementation Manual.

3.2.4 P3 Office Responsibility for Developing Projects

The second key function of the P3 Office is project development. If there are multiple projects in the development process, the P3 Office works with the Department and relevant Public Entities to prioritize projects for development based on a consideration of Commonwealth policy, priorities and objectives; available public funding; market timing; public comment; availability of human resources; and current level of project development.

For agencies under the Governor's jurisdiction, the P3 Office, at the direction of the appropriate Deputy Secretary or other agency official, appoints a Project Manager for each project approved by the P3 Board and selected for development through the P3 Program. Initially, the P3 Office and the appropriate Deputy Secretary or other agency official will identify a Project Manager from existing staff with subject matter and technical expertise applicable to the Transportation Project under development. The Project Manager will be a person with strong commercial expertise and public policy and infrastructure industry knowledge. Working closely with other disciplines within the Department, the Project Manager has overall responsibility for addressing the needs of a specific Transportation Project, including overseeing its development, procurement, contract execution and reaching financial close. Any member of the P3 Office may serve as the Project Manager at the discretion of the P3 Office Director.

For approved Transportation Projects that fall under the jurisdiction of Public Entities outside the Governor's jurisdiction, the P3 Office Director will not appoint a Project Manager; instead, it will be the responsibility of the Agency Administrator of the Public Entity to appoint an individual or individuals to perform these duties. The P3 Office Director may designate a P3 Office Liaison that will provide support and oversight as well as coordinate with the Public Entity on the development, procurement, negotiation and execution of Transportation Projects.

3.2.5 P3 Office Responsibility for Contract Management

The third key function of the P3 Office is contract management. Once a Public-Private Transportation Partnership Agreement is executed and financial close has occurred, the P3 Office will assist with contract management and serve as a resource for the Department or agency for any commercial issues that may arise during the development, and/or operations and maintenance phases of the project. The P3 Office's role also includes certain contract compliance responsibilities such as reviewing the periodic updates to the financial model; evaluating revenue sharing provisions; monitoring refinancing activities; reviewing the audited financial statements for the Transportation Project; tracking the use of public funds, if any, in compliance with Federal and Commonwealth requirements; and other activities as defined in the applicable Public-Private Transportation Partnership Agreement.

For approved Transportation Projects that fall under the jurisdiction of Public Entities outside the Governor's jurisdiction, contract management will be the responsibility of the Public Entity.

3.3 Steering Committee

The primary function of the Steering Committee is to provide policy and procurement guidance and analyze Transportation Projects for the purpose of making recommendations to the P3 Board. The Committee's review shall include comments received from affected Public Entities.

The Steering Committee is comprised of any or all of the following Department officials or their designees: the Secretary of Transportation, Executive Deputy Secretary, Deputy Secretary for Planning, Deputy Secretary for Administration, Deputy Secretary for Highway Administration, Deputy Secretary for Driver and Vehicle Services, Deputy Secretary for Multimodal Transportation, Chief Counsel, the Communications Director, and the Legislative Affairs Director. Additionally, the Secretary may appoint any Department employee, any person representing a Public Entity or external stakeholder to serve on the Steering Committee on an ad hoc basis to represent a specific Public Entity or external stakeholder affected by a Transportation Project and/or provide subject matter expertise to evaluate a Transportation Project from a technical and/or financial perspective. The Secretary may also invite a representative of the appropriate federal agency to serve as an observer.

3.4 Secretary of Transportation

The Secretary of Transportation or an employee designated by the Secretary serves as the Chairman of the Steering Committee and the P3 Board and will provide oversight, guidance and direction to the activities of each as appropriate and necessary.

The Secretary has the legal authority to make decisions on commercial, policy and contractual issues related to Transportation Projects within the Department. Decisions on commercial, policy and contractual issues on projects related to other agencies or Public Entities are the legal responsibility of the appropriate official(s) of those entities.

3.5 Public-Private Transportation Partnership Board

The purpose of the P3 Board is to evaluate and, when in the best interests of the Commonwealth and the Public Entity, approve proposed Transportation Projects. Approval of a project establishes the scope and framework from which the Public Entity can solicit, negotiate and enter into an agreement with a Private Entity.

The statutory requirements of the P3 Board are described in further detail below.

3.5.1 P3 Board Composition and Operation

The P3 Board is comprised of seven (7) members: The Secretary of Transportation and the Secretary of the Budget (or a designated employee of their respective agencies); one (1) gubernatorial appointee; and four (4) legislative appointees designated by the Majority Leaders and Minority Leaders of the Senate and the House. Appointees must be residents of Pennsylvania and have expertise or substantial experience in transportation, finance, law, or land use and public planning. All appointees serve at the pleasure of their respective appointing authorities.

The P3 Board is chaired by the Secretary of Transportation. If the Secretary designates an employee of the Department to serve in the Secretary's stead, that person also serves as Chair of the P3 Board.

The P3 Board is required to meet as often as necessary to perform its duties and must meet at least one (1) time a year. Four (4) members of the P3 Board must participate in a meeting in order for the P3 Board to conduct its official business in accordance with the P3 Law's quorum requirement.

A majority vote of the members of the P3 Board at a meeting is necessary for it to take official action, such as the approval or disapproval of a proposed project. Furthermore, unanimous approval is required for a proposed Transportation Project that provides for Optional User Fees.

Meetings of the P3 Board are subject to the Sunshine Act; there must be public notice, and they must be open to the public except in the limited circumstances where the Sunshine Act

allows for them to be closed. The Right-to-Know Law, 65 P.S. §§ 67.101-.3104, applies to records of the P3 Board.

3.5.2 P3 Board Duties

Under Section 9104 of the P3 Law, the P3 Board must meet for the purposes of conducting its business, which includes:

1. adopting this Implementation Manual outlining the procedure by which a Public Entity may submit a request for a proposed Transportation Project or a Private Entity may submit an unsolicited plan for a proposed Transportation Project to the P3 Board;
2. consulting with persons affected by proposed Transportation Projects;
3. evaluating and, where the P3 Board finds that the requests or plans for proposed Transportation Projects are in the best interests of the Commonwealth and Public Entity, approving the requests or plans for proposed Transportation Projects by adopting a resolution; and
4. submitting an annual report to the General Assembly detailing all transportation projects evaluated and resolutions adopted.

“The Department shall supply all necessary assistance to assist the [P3] Board in carrying out its duties and responsibilities, including retention of legal, financial and technical consultants”; this assistance includes, but is not limited to, preparing the P3 Board’s annual report for P3 Board approval. 74 Pa.C.S. § 9105(a).

Additionally, when the P3 Board evaluates proposed Transportation Projects, it shall review the analysis and summary of comments provided by the Department (as further explained in Section 5.4 of this Implementation Manual) and public comment(s). If the P3 Board, after careful consideration of the detailed analysis and public comment, “finds that the proposed Transportation Project is in the best interests of the Commonwealth,” the P3 Board may approve the Transportation Project by resolution. 74 Pa.C.S. § 9105(b.2). A copy of the resolution shall be posted on the Department’s publicly accessible website and shall be transmitted by the Department to: (1) the chairperson and minority chairperson of the Transportation Committee of the Senate; (2) the chairperson and minority chairperson of the Transportation Committee of the House of Representatives; and (3) the Legislative Reference Bureau for publication in the Pennsylvania Bulletin within forty-eight (48) hours after approval.

3.5.3 P3 Board Restrictions, Conflicts and Ethics

Under the P3 Law, individual members of the P3 Board are subject to a full array of legal limitations relating to the Transportation Projects that the P3 Board is charged with reviewing or that flow directly from their status as members of the P3 Board.

Section 9103(h) of the P3 Law expressly prohibits a member of the P3 Board, during the term of office, from “directly or indirectly” owning, having any “significant financial interest in,” being associated with or receiving “any fee, commission, compensation or anything of value”

from any entity, public or private, which is seeking to engage in a public-private transportation project.

Section 9103(i) of the P3 Law, in turn, makes clear that P3 Board members are “public officials” for purposes of the Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101-1113 (“Ethics Act”); the P3 Board members are subject to prohibitions relating to conflicts of interest and associational restrictions that are similar to those set forth in the P3 Law itself, as well as restrictions that extend to their spouse, immediate family members and businesses with which they or their family members are associated.

The restrictions in the Ethics Act have a somewhat broader focus than those expressly set forth in Section 9103(h) of the P3 Law because they can involve entities other than those having business before the P3 Board, including former employers. The Ethics Act also precludes a former P3 Board member from representing any entity in a matter before the P3 Board for a period of one year after the conclusion of the member’s service with the P3 Board. Each member of the P3 Board must annually file a statement of financial interests with the State Ethics Commission. The financial statement, which is on a form provided by the State Ethics Commission, is for the calendar year and must be filed by May 1 of the succeeding year.

Under Section 9103(i) of the P3 Law, P3 Board members are also subject to the State Adverse Interest Act. As “state advisors” under the terms of the State Adverse Interest Act, members are subject to restrictions on their ability to participate at a later time in contracts arising out of Transportation Projects approved by the P3 Board.

P3 Board members for whom participation in any matter before the P3 Board will violate Section 9103(h) of the P3 Law, the Ethics Act, or the State Adverse Interest Act must abstain fully from any involvement in such a matter. To the extent that a P3 Board member has any doubt as to whether involvement in a matter is problematic under the Ethics Act, the P3 Board member may obtain an advisory opinion from the Ethics Commission that can be relied on to guide the P3 Board member’s decision as to whether abstention is necessary.

3.5.4 P3 Board: Right-to Know-Law and Records

Records of the P3 Board are subject to Pennsylvania’s Right-to-Know-Law (RTKL). To the extent that records received or created by or for the P3 Board or its members qualify as “public records” under the RTKL, they are subject to public inspection by requestors in accordance with the timeframes specified in the RTKL. The Department will administer requests for P3 Board records as part of its responsibility to provide the P3 Board with the assistance necessary to carry out its operations. Requests for P3 Board records will be referred to the Department’s Open Records Office in accord with the Department’s published RTKL policy. The Department’s Agency Open Records Officer, in consultation with the Department’s Office of Chief Counsel, will determine whether a request is to be granted or denied and, to the extent a request is granted, will coordinate production of the subject records. In the event a denial of a request is appealed to the Commonwealth’s Office of Open Records, the matter will be handled by the Department’s Office of Chief Counsel.

The P3 Law, 74 Pa.C.S. § 9111, addresses the extent to which records relating to the selection and retention of a Development Entity by a Proprietary Public Entity are public. The selection itself triggers a requirement that the identity of the selected entity, its response to the RFP, its final proposal (if any) and the form of the Public-Private Transportation Partnership Agreement all be made public. However, financial information submitted by the Development Entity in response to the requirements of the RFP or which was requested by the Proprietary Public Entity during discussions or negotiations with the Development Entity and used to demonstrate the latter's financial capacity to fully meet the requirements of the contract for the project are not subject to public inspection unless the Development Entity and the Proprietary Public Entity agree, as a matter of discretion, to make them public. Additionally, the P3 Law states the following "information" shall not be public:

1. Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies[;]
2. Security information, including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols and countermeasures[;]
3. Records considered nonpublic matters or information by the Securities and Exchange Commission under 17 CFR 200.80 (relating to commission records and information[;]
4. Any financial information deemed confidential by the [P]roprietary [P]ublic [E]ntity upon a showing of good cause by the offeror or [D]evelopment [E]ntity [; and]
5. Records prepared or utilized to evaluate a proposal.

74 Pa.C.S. 9111(4).

4. PROJECT IDENTIFICATION

Project identification is the first phase of the P3 framework. As mentioned in Chapter 2 Organizational Structure of this Implementation Manual, the P3 Office and the Public Entity's relevant planning divisions are responsible for managing the project identification process.

There are two primary sources from which transportation projects can be identified for consideration as Transportation Projects:

- **Solicited Projects:**

The planning staffs across all Public Entities are encouraged to identify Transportation Projects for P3 consideration. Planning staffs should review the high-level screening Criteria discussed in Chapter 5, Project Screening of this Implementation Manual, as they consider suitable candidates for P3 Transportation Projects.

- **Unsolicited Projects:**

Unsolicited Proposals submitted by Private Entities will be considered as unsolicited projects. The specific steps to be followed for each of the two sources are outlined below.

All projects, solicited or unsolicited, require approval by the P3 Board and shall be procured by the Public Entity by means of a Request for Proposals (RFP); there is no authority under the P3 Law to undertake a sole source procurement.

4.1 Solicited Projects

Solicited Projects are identified through the transportation planning process that is carried out at the state, regional, local and municipal levels throughout the year by the Commonwealth's transportation agencies and offices that have the authority to develop and/or operate public transportation facilities. Examples of sources for candidate Transportation Projects may include the various planning documents and entities listed below:

- Transportation Related P3 Priority of the Governor;
- Twelve-Year Program (12YP);
- Transportation Related P3 Priority of a Public Entity;
- Port Authority Master Plan;
- Airport Capital Improvement Plan; and
- Metropolitan/Rural Planning Organization Long Range Transportation Plan.

4.1.1 P3 Candidate Project Form

To initiate a high-level review and policy analysis of a proposed P3 Transportation Project, the Department Deputate, or other Public Entity that has identified a candidate project should submit a completed *P3 Candidate Project Form* to the P3 Office. This form can be submitted during specified periods of time pursuant to this Implementation Manual. Information requested in this form will allow for a high-level analysis by the P3 Office.

The P3 Office will provide feedback to the Department, Agency or other Public Entity based on the high-level analysis and make a recommendation as to whether the Transportation Project should advance to the detailed-level screening process.

The Department, Agencies and other Public Entities are encouraged to provide relevant supporting information / documentation for the candidate Transportation Project to allow the P3 Office to conduct the high-level screening and evaluation in a timely manner. Such information could include the expected scope, schedule, and lifecycle costs of the Transportation Project; expected benefits, e.g., improved mobility, enhanced economic development, and reduced congestion; conceptual financial plan; rationale for/benefit of a P3 implementation relative to a conventional project delivery approach; as well as any additional information the P3 Office determines is necessary to complete a high-level screening.

4.2 Unsolicited Projects

The P3 Office on behalf of the Department, any other Public Entity or the P3 Board, is permitted to receive and evaluate Unsolicited Proposals from Private Entities to develop and/or operate Transportation Facilities under their jurisdiction.

The P3 Office will establish and publish in the Pennsylvania Bulletin and on the P3 Office website dates when it and the P3 Board will accept and consider Unsolicited Proposals for projects on facilities owned by the Commonwealth. There will be at least two periods during the calendar year for private entities to submit Unsolicited Proposals to the P3 Office. Each such period will begin no later than six months following the beginning of the immediately prior period and will last at least 30 days.

4.2.1 One-on-One Meetings

Private Entities are encouraged to request one-on-one meetings with the P3 Office and/or a Public Entity to have preliminary discussions on potential Unsolicited Proposals prior to submission. As part of such one-on-one meetings, the P3 Office and/or Public Entity may provide informal feedback and comments, as appropriate, to the Private Entity. However, a formal review of an Unsolicited Proposal will only be undertaken once a Private Entity makes a formal submission. The P3 Office and Public Entity will review the Unsolicited Proposal based on the guidelines defined in this Implementation Manual and will advise the P3 Board whether to proceed with the project just as it would for a solicited project.

4.2.2 Unsolicited Proposal Required Contents

An Unsolicited Proposal must contain information which is sufficient for the P3 Office and/or Public Entity to evaluate the merits of the proposed Transportation Project. At a minimum, the Unsolicited Proposal is required to include the information outlined in the P3 Project Candidate Form that will be available on-line during Unsolicited Proposal open periods. The minimum information required for the P3 Project Candidate Form includes:

- Applicant Information
- Project Background, including:

- Project Name
- Applicable District
- Applicable Planning Region
- Current Authorization
- Project Details
 - Project Description (location, length, general scope)
 - Purpose and Need Statement
 - Total Estimated Project Cost
 - Preliminary Financial Plan
 - Impacted Jurisdictions
- Expected Project Benefits
 - Benefits: Such as improved mobility, reduced congestion, economic development, etc.
 - Rationale for / Benefits of P3 Implementation Relative to Conventional Project Delivery
 - Precedent: Are any other states utilizing P3 or a similar innovative project delivery approach?
 - Outside Expertise: Is there supporting information from other states, the federal government, trade associations, etc.
- Owner of Property / Facility

4.2.3 Unsolicited Proposal Additional Information

Following an initial review of the P3 Project Candidate Form for an Unsolicited Proposal, the P3 Office may request additional information, including but not limited to:

- **Qualifications** concerning the experience, expertise, technical competence and qualifications of the Private Entity and of each member of its management team and of other key employees, consultants and subcontractors, including the name, address and professional designation. Financial strength and capacity of the Private Entity should be demonstrated by the inclusion of financial statements (including audited financial statements where available) and disclosure of material changes in the Private Entity's financial position.
- **More Detailed Project Description.** A narrative with supporting graphics and maps describing:
 1. The limits, scope, location of the proposed Transportation Project;
 2. Right-of-way requirements;
 3. Connections with other transportation facilities and improvements to those
 4. facilities which will be necessary if the project is developed;
 5. A conceptual project design, if appropriate;
 6. A statement of the project's consistency with the Twelve-Year Plan and relevant MPO / RPO Long Range Transportation Plans and expected results including financial performance and improvements to mobility and capacity;

7. All studies which may have been completed by the Private Entity concerning the Transportation Project; and
 8. Information to the extent available on the Department and/or prospective Proprietary Public Entity's performance of its environmental review responsibilities.
- **Schedule** showing anticipated timeline of contract award, start of construction, completion of construction, start of operations and anticipated major maintenance or reconstruction activities during the life of the proposed Public-Private Transportation Project Agreement. Timelines with specific dates are typically less useful at this stage than those showing general durations and timing mileposts (year 0, year 1, etc.).
 - **Operating Plan** describing the operation of the completed facility if operation is part of the Proposal. This should describe the management structure and approach, the proposed period of operations, enforcement, emergency response and other relevant information.
 - **Finance Plan** describing the proposed financing of the project. It should identify the source of funds to design, construct and maintain the Transportation Project, including, as relevant, Private Entity equity, capital markets debt, TIFIA loans, public equity contributions if any and any projected revenue streams including user fees. Proposals must include a detailed cash flow model in Excel format projecting all sources and uses of funds on an annual basis from execution of a Public-Private Transportation Project Agreement to the earlier of the proposed end of the term of the Public-Private Transportation Project Agreement, or 99 years. The assumptions supporting the financial plan and financial model must be documented.
 - **Financial feasibility** of the project should be demonstrated by showing that projected funding from all relevant sources is sufficient to support all design, construction, operation and maintenance activities, as well as providing for contingencies and sums to meet facility turn-back requirements at the end of the Public-Private Transportation Project Agreement.
 - **Legal Basis** citing the statutory authority (Federal, State and local if applicable) under which the Transportation Project will be delivered. If such authority does not exist, exemptions or proposed changes to the relevant statutes which are necessary to allow the project to move forward should be identified.
 - **Bonds, Letters of Credit and Guarantees.** If the Unsolicited Proposal proceeds to the detailed-level screening phase, the Private Entity must demonstrate that it is able to obtain performance and payment bonds, a letter of credit, parent company guarantee or other security acceptable to the P3 Office and/or Public Entity and consistent with the size and complexity of the Transportation Project. Similarly, it must demonstrate that it is able to obtain insurance covering general liability and liability for errors and omissions as the P3 Office and/or prospective Proprietary Public Entity, in its sole discretion, may require.

- **No Previous Breach of Contract or Disqualification.** The Private Entity must demonstrate that it, its subcontractors and consultants (1) are not currently debarred by any federal, Commonwealth or local entity and (2) have never failed to complete a contract for a Public Entity as a result of having been declared in default.
- **Licenses and Certifications.** The Private Entity must demonstrate that it and its members, subcontractors and consultants possess or can obtain by the Award Date, if any, the licenses and certificates necessary to carry out their respective functions within the Commonwealth.

4.1.1 Unsolicited Proposal Deposit

Projects with a total estimated or projected overall cost of less than \$10 million will not be subject to a deposit.

Projects with a total cost of greater than \$10 million may require a deposit of \$50,000 to serve as a review fee should it advance beyond the Pass/Fail and high-level project screening process. If a project does not receive a favorable recommendation as part of the high-level screening process, the deposit will be returned to the Private Entity with its agreement not to offer the proposal directly to the P3 Board. If a Private Entity submits the proposal directly to the P3 Board despite an un-favorable recommendation from the Steering Committee, the deposit will become a review fee and non-refundable regardless of further action taken by the P3 Board.

Once a project advances to the detailed-level screening process, the P3 Office may require the private entity to share in a portion of the costs associated with the evaluation and review of the proposal. Review costs billed to the Private Entity will be based on terms and rates mutually agreed to by both parties prior to any work being performed.

4.2 Key Action Items: Project Identification

- Public Entity Submits P3 Candidate Project Form or Private Entity Submits Unsolicited Proposal
- P3 Office and/or Public Entity reviews P3 Candidate Project Form or Unsolicited Proposal for potential project screening

5. PROJECT SCREENING

A proposal for a P3 project may be submitted one of three ways: directly to the P3 Board; directly to the P3 Office; or directly to the Public Entity.

A proposal from the private sector submitted directly to the P3 Board and/or to the P3 Office will be considered an Unsolicited Proposal for purposes of screening. A proposal submitted directly from the private sector to the Public Entity will receive an initial review by that agency which will determine whether to submit the project to the P3 Office.

Project screening is designed to assist the P3 Office and a Public Entity in determining the suitability of delivering projects utilizing a P3 framework. The project screening methodology is a means to systematically apply evaluation criteria to Solicited Projects and Unsolicited Proposals.

The Project Screening process for both Unsolicited and Solicited Projects is organized into the following phases:

5.1 High-Level Screening

After an Unsolicited Proposal has been determined to be in compliance with the filing requirements (Pass/Fail test), the P3 Office and/or Public Entity will conduct a high-level Project Screening in accordance with the P3 Law and this Implementation Manual; or after a complete Candidate Project Form has been received by the P3 Office for a Solicited Proposal, the P3 Office will conduct a high-level project screening for the Solicited Proposal.

This initial high-level analysis will be conducted to assess how well the proposed project would benefit from a P3 approach compared to a conventional delivery approach. Factors to be considered can include:

- Conformance with the P3 Law;
- Opportunity to accelerate project implementation and reduce reliance on public funds;
- Potential for increased revenue generation/revenue sharing with the Department or Public Entity;
- Capability of the private sector to address project complexities;
- Ability to allocate/share risks in a cost-effective manner;
- Technical and financial feasibility; and
- Ability to meet Commonwealth and/or Public Entity transportation, economic development and environmental goals.

The high-level screening analysis will be conducted based on the Candidate Project Form and supporting information provided by the Department or Public Entity for Solicited Projects or Proposals submitted by Private Entities for Unsolicited Projects.

Following the high-level screening, the P3 Office and the Public Entity will meet with the Deputy Secretary for Planning and the appropriate modal Deputy Secretary to discuss the

Transportation Project. At this point in the process, the P3 Office may make a recommendation to the Deputy Secretary for Planning and the appropriate modal Deputy Secretary to either:

- proceed to the detailed-level project screening phase;
- reject and return the Proposal; or
- seek more information.

5.2 Detailed-Level Screening

Projects passing the high-level screening analysis will proceed to the detailed-level screening phase. The P3 Law outlines minimum elements of the detailed-level screening, as described in Section 5.2.1 of this Implementation Manual.

More detailed quantitative and qualitative analyses may be undertaken, as the P3 Office and Public Entity deem appropriate, as described in Section 5.2.2 of this Implementation Manual. Additional detailed-level screening analyses will be determined by the P3 Office and/or Public Entity on a project-by-project basis.

5.2.1 Detailed Analysis Required in the P3 Law

In accordance with the P3 Law, after a proposed Transportation Project is brought to the Department and prior to request or recommendation for P3 Board approval, the Department shall develop a detailed analysis, which contains, at a minimum, the following information (the Department will review this as part of the detailed-level screening):

1. The anticipated location of the proposed [T]ransportation [P]roject.
2. The type of [T]ransportation [F]acility or [T]ransportation-[R]elated [S]ervice to be improved.
3. The estimated costs of the proposed [T]ransportation [P]roject to the [P]ublic [E]ntity.
4. The estimated length of the [P]ublic-[P]rivate [T]ransportation [P]artnership [A]greement.
5. The potential social, economic, and environmental impacts of the proposed [T]ransportation [P]roject.
6. If the proposed [T]ransportation [P]roject proposes an [O]ptional [U]ser [F]ee, include the estimated amount for each user group and type of user fee
.....
7. Applicable [f]ederal and [s]tate laws.
8. Alternative courses of action to improve the [T]ransportation [F]acility or [T]ransportation-[R]elated [S]ervice without a [P]ublic-[P]rivate [T]ransportation [P]artnership and the associated risks of improving the [T]ransportation [F]acility or [T]ransportation-[R]elated [S]ervice with a [P]ublic-[P]rivate [T]ransportation [P]artnership.

74 Pa.C.S. § 9105(b).

The Department can choose to conduct additional evaluations.

The results of these detailed-level analysis elements will form the basis of the P3 Office’s recommendation whether to proceed with a Transportation Project as a P3 project. Prior to distribution of materials outlined in Section 5.3 of this Implementation Manual, the P3 Office shall review the findings of the detailed-level Analysis with the Steering Committee for concurrence that it has been finalized in accordance with the P3 Law.

5.2.2 Additional Detailed-Level Screening Elements

In addition to the minimum requirements outlined in the P3 Law, more detailed quantitative and qualitative analyses may be undertaken, as the P3 Office and Public Entity deem appropriate. Additional detailed-level screening analyses will be determined by the P3 Office and/or Public Entity on a project-by-project basis. This may involve additional planning, engineering, travel demand, environmental, industry outreach, risk assessment, mitigation plans, and financial analyses to further define a project.

One example of an additional detailed-level analysis element is the initial Best Value Analysis, as described in 5.2.2.1.¹ Another example of an additional detailed-level analysis element would include various types of industry outreach, such as a Request for Information or industry meetings, as described in Section 5.2.2.2 of this Implementation Manual.

5.2.2.1 Initial Best Value Analysis

One of the detailed-level evaluations undertaken by the Department that is not required by the P3 Law will be the development and application of an initial Best Value Analysis. The P3 Office, in concert with the Department and/or a Public Entity, will conduct the initial Best Value Analysis to help evaluate in greater detail whether the P3 approach provides an optimal solution. A Best Value Analysis is typically a component of the overall business case for determining whether a proposed Transportation Project should be recommended.

The appropriate Best Value methodology will vary across modes and revenue structures—e.g., optional toll roads versus availability payment transactions. However, a Best Value Analysis should be conducted for all Transportation Projects considered for P3 delivery. Best Value Analysis methodology should incorporate the technical and financial elements of a Transportation Project considered for a P3 project. As appropriate, the Best Value Analysis methodology should also reflect any requirements for a project receiving federal funding or federal financing assistance. In certain circumstances, this may require the P3 Office to develop a more rigorous value for money analysis that should align with the specific requirements outlined in federal law. A value for money analysis can be regarded as one type of a Best Value Analysis. If federal value for money requirements do not apply, the initial Best Value Analysis does not need to include all elements of the federal process to address the standard questions of Best Value.

¹ Under certain circumstances, federal law may require a best value analysis, such as a value for money analysis, in which case it would not be considered an additional optional analysis.

In a standard Best Value Analysis approach, the development of a Transportation Project as a P3 project will be evaluated against the delivery of the project under a more conventional approach. Under this analytical framework, the P3 Office, working in concert with the Department and/or a Public Entity, as appropriate, will conduct a qualitative and quantitative assessment to determine if a P3 structure provides a preferred solution, or “Best Value” when compared to a conventional project delivery method. In some cases, the P3 approach may provide Best Value if it delivers lower lifecycle costs and/or greater revenues to the Commonwealth and/or a Public Entity while surpassing the conventional delivery approach in achieving the established objectives of the Transportation Project. As a component of the overall business case for determining whether a proposed Transportation Project should be recommended, a summary of the Best Value Analysis results may be included as part of the distribution described in Section 5.3 of this Implementation Manual.

The P3 Office may update the initial Best Value analysis at various points during the project development and procurement processes, potentially with inputs that accompany the submission of Proposals by Private Entities during the competitive procurement process.

5.2.2.2 Industry Outreach

Another detailed-level analysis element that is not required by the P3 Law but may be undertaken by the Department could be the implementation of various industry outreach activities. This may include the issuance of a Request for Information to relevant industry participants to help the Department understand the level of market interest in a potential project and specific aspects of the approach. Other industry outreach activities that may occur separately or in coordination with the Request for Information could be an industry briefing, industry forum and/or industry one-on-one meetings to share information with and gather feedback from industry participants in advance of a potential procurement process. If an industry partner responds to a Request for Information, or participates in other industry outreach activities, that activity would not be a pre-requisite for participating in a future procurement process and similarly, the activity would not bar participation in a future procurement. The Department may also conduct industry outreach activities during the Project Development phase of the process.

5.3 Distribution of Detailed-Level Analysis for Public Comment

After the Department’s analysis is finalized in accordance with the P3 Law, the P3 Office, on behalf of the Department shall: (1) post a copy of the final analysis on its publicly accessible website; (2) submit the analysis to the P3 Board; (3) provide the analysis to the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives; and (4) transmit notice of the analysis to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin for 60 days prior to any action by the P3 Board.

The public shall be allowed to comment on the proposed Transportation project during the public comment period, which commences with the publication of the notice in the Pennsylvania Bulletin and which shall continue for a period no less than thirty (30) days.

5.4 Documentation of Public Comment

After the public comment period closes, the P3 Office, on behalf of the Department, will gather the comments and summarize the comments. The P3 Office, on behalf of the Department, will subsequently post all of the submitted comments and a summary of such on the Department's publicly accessible website; the summary shall include the following: (1) a description of the proposed Transportation Project; (2) a copy of the notice that was published in the Pennsylvania Bulletin; (3) the time period where the public was allowed to provide comments; and (4) a chart or graph that accurately portrays all submitted comments, including positive and negative public input on the proposed Transportation Project. The Department shall also provide the analysis and summary of comments to the P3 Board, the chairperson and minority chairperson of the Transportation Committee of the Senate, and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

5.5 P3 Board Consideration of Proposed Transportation Project

After receiving documentation and summary of the public comments, the P3 Board shall consider the proposed Transportation Project for approval. Approval of a proposed transportation project shall be in the form of a resolution signed by the chairperson of the board.

5.6 Legislative Consideration of Transportation Projects

If a project is approved by the P3 Board, a copy of the resolution for the Transportation Project will be posted on the Department's public website and transmitted by the Department within forty-eight (48) hours after approval to the (1) chairperson and minority chairperson of the Transportation Committee of the Senate; (2) the chairperson and minority chairperson of the Transportation Committee of the House of Representatives; and (3) the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. Upon receipt of the resolution from the Board as stated in this Section, if the transportation facility that is the subject of the Transportation Project is owned by the Commonwealth, the General Assembly will be given an opportunity of nine (9) legislative days or twenty (20) calendar days, whichever is longer, to pass a concurrent resolution by majority vote in both the House and Senate rescinding approval of the project.

5.7 Key Action Items: Project Screening

- P3 Office develops high-level screening report
- P3 Office presents project to the Deputy Secretary for Planning and the appropriate modal Deputy Secretary for review and concurrence
- If the Deputy Secretary for Planning and the appropriate modal Deputy Secretary concurs, the P3 Office conducts a detailed-level screening
- P3 Office performs detailed-level analysis and presents it to the Steering Committee for concurrence

- Detailed-level analysis distributed for public comment and review by the P3 Board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives
- The feedback from the public comment period is documented, posted publicly, and shared with the P3 Board, the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives
- P3 Board considers the proposed Transportation Project for approval
- If approved by P3 Board, the (1) chairperson and minority chairperson of the Transportation Committee of the Senate; (2) the chairperson and minority chairperson of the Transportation Committee of the House of Representatives and (3) the Legislative Reference Bureau will be notified and Transportation Project approval may be rescinded by concurrent resolution within the longer of 20 calendar days or nine legislative days of receipt of the resolution, if the subject transportation facility is owned by the Commonwealth
- P3 Office notifies relevant Public Entity
- If approved, Public Entity begins procurement process

6. PROJECT DEVELOPMENT

6.1 Project Development Process for the Department

During the project development phase, a number of key tasks may take place to prepare the Transportation Project for procurement depending upon its characteristics. These include, but are not limited to:

- further defining project scope, design concept and phasing schedule;
- establishing the organizational framework and processes for project-specific decision-making which will be applicable both during the procurement and throughout project delivery;
- analyzing compliance with Federal and Commonwealth environmental and transportation planning requirements and verifying that the project's scope and schedule is consistent with these requirements;
- analyzing technical feasibility and evaluations of operations and maintenance;
- refining project costs, revenue estimates and lifecycle costing;
- conducting a risk assessment of key project elements including environmental, scope and design elements, schedule, costs and revenue estimates;
- performing industry outreach to determine private sector interest in the project, including but not limited to a Request for Information, one-on-one meetings with market participants, industry briefings, and/or industry forums;
- defining an approach to risk allocation and management;
- submitting funding and grant applications as required;
- performing outreach, coordinating public involvement and garnering stakeholder support;
- refining and updating the initial Best Value Analysis, as needed; and
- determining the optimal project delivery mechanism and procurement process.

Depending upon the scope and complexity of the Transportation Project, some or all of these tasks will be undertaken as part of the high-level and detailed-level screening analyses. Once the P3 Board approves a Transportation Project, further detailed analyses involving some or all of these tasks will be required throughout the project development and procurement process.

For those Transportation Projects for which a federal action may be required, the P3 Office will ensure that decisions relating to, among other things, mode, location, Optional User Fees, and capacity are made after adequate consideration of potential alternatives to address needs and assess impacts of the Project. The P3 Office in coordination with appropriate Department Deputates may implement slight modifications to the scope of Department Projects so long as such changes are compatible with the scope approved by the P3 Board. Requirements for major changes will necessitate the review of the Steering Committee and approval of the P3 Board. Likewise, Public Entities may implement minor modifications to the scope of their Transportation Projects so long as they are consistent with the P3 Board's approval. The Public Entity must obtain P3 Board approval for any modifications that represent a material change to the Transportation Project's scope.

Both Solicited and Unsolicited Projects will accommodate several different types of project and service delivery methods. The types of delivery mechanisms will be analyzed as part of the initial, high-level and detailed-level screening processes on the basis of, among other things, the nature and status of the project, project risk factors, schedule, funding and goals. The procurement package will reflect the intended project delivery mechanisms as set forth in the P3 Law. The P3 Office or the Public Entity will evaluate the appropriate project delivery methods for each Transportation Project.

Possible delivery mechanisms for Transportation Projects include:

- Predevelopment Agreements leading to other implementing agreements;
- Design-Build Agreement;
- Design-Build-Operate Agreement;
- Design-Build-Maintain Agreement;
- Design-Build-Finance-Operate Agreement;
- Design-Build-Operate-Maintain Agreement;
- Design-Build-Finance-Operate-Maintain Agreement;
- Operate-Maintain Agreement;
- Concession providing for the Development Entity to design, build, finance, operate, maintain, manage or lease a Transportation Facility; and
- Any other innovative or non-traditional project delivery method or agreement or combination of methods or agreements that the P3 Office and/or a Public Entity determines will address the transportation needs of the Commonwealth and the Public Entity and serve the public interest.

6.2 Key Action Items: Project Development

- The Department, Public Entity and P3 Office perform project development activities (e.g., geotechnical, survey, project procurement/delivery strategy, environmental, preliminary engineering, and risk analysis)
- The P3 Office Director notifies project sponsors and affected jurisdictions
- The P3 Office manages and coordinates the project development process

7. PROJECT PROCUREMENT

If the P3 Board determines that a proposed project, whether arising from an Unsolicited Proposal or from within a Public Entity, is in the best interest of the Commonwealth and the Public Entity, the P3 Office and/or a Public Entity may request competing Proposals to develop, finance, construct, improve, maintain or operate, or any combination thereof, the Transportation Project. If such a determination is made, the policies developed pursuant to the P3 Law and this Implementation Manual, which has also been developed under the authority of the P3 Law, will govern the procurement.

7.1 Procurement Process

7.1.1 Phased Procurement

Once the P3 Board approves a Transportation Project, the P3 Office or a Public Entity can initiate the competitive procurement process.

The P3 Office or a Public Entity may use a multi-phase process to procure a Transportation Project. A multi-phase selection process may consist of some or all of:

- The issuance of a Request for Qualifications (RFQ),
- Industry Review Meetings (see below), and/or
- Issuance of a Request for Proposals (RFP).

The determination as to whether to utilize some or all of these procurement phases will be project-specific. However, an RFP is required for Transportation Projects approved by the P3 Board. Although there may be several phases as described above, including Industry Review Meetings, common terminology refers to “one-step” or “two-step” procurements. The former is used when an RFP is posted and any entity may respond. The latter is used when bidder qualifications are solicited, evaluated and then used to define a group of qualified bidders to whom an RFP is then issued.

Upon receipt of an Unsolicited Proposal and a determination by the P3 Board that the Transportation Project is in the best interest of the Commonwealth and the Public Entity, the P3 Office or Public Entity may issue an RFQ or RFP for competing proposers. The P3 Office or a Public Entity may also incorporate minor modifications to the potential project submitted in the Unsolicited Proposal for the RFP, in keeping with scope approved by the P3 Board. Only a material modification subsequent to the P3 Board’s approval requires an additional review and approval by the P3 Board.

At the P3 Office and/or Public Entity’s sole discretion, an Industry Meeting may be held prior to issuing either an RFQ or RFP in order to inform the industry of the opportunity and to hear industry suggestions which may at the P3 Office and/or Public Entity’s sole discretion be incorporated into solicitation documents.

The purpose of an RFQ is to identify qualified candidates for continuing in the procurement process. The P3 Office or Public Entity may prequalify or short-list one or more candidates

based on their responses to the RFQ and/or information already provided during the Unsolicited Proposal review process. Those candidates will then be eligible to receive an RFP and submit a proposal for the project in response to the RFP. The P3 Office and/or Public Entity is not obligated to utilize an RFQ and may, in its sole discretion, proceed directly to the issuance of an RFP.

Industry Review Meetings, held at the discretion of the P3 Office or Public Entity, are intended to share information regarding RFP-related documents (Instruction to Proposers, Technical Provisions, Public-Private Transportation Partnership Agreement Term Sheet) and are either open to all interested Private Entities or restricted to prequalified or shortlisted Private Entities in order to obtain feedback, comments and suggestions from such Private Entities regarding draft documents, key project components and technical, financial and legal issues.²

The meetings may be joint workshops with all interested or pre-qualified/shortlisted Private Entities or individual one-on-one meetings (which may be physical meetings or conference calls), as deemed necessary by the P3 Office or the Public Entity. One-on-one meetings are generally confidential and often address matters that are proprietary to the shortlisted Private Entity. Nonetheless, the P3 Office or Public Entity will always reserve the right to modify or revise the RFP documents as a result of the one-on-one meetings. Generally, shortlisted/prequalified Private Entities shall each be afforded the same opportunity to meet and talk with the P3 Office and/or Public Entity in connection with the Transportation Project and, to the extent practicable, the same P3 Office, Department and/or Public Entity personnel and advisors should be present during each round of meetings. Industry Review Meetings, whether conducted as joint sessions or as one-on-one meetings, are for informational purposes only; they are NOT to be used for the purpose of conducting negotiations or otherwise reaching agreement between a Private Entity, the P3 Office or a Public Entity. Information divulged to a Private Entity as part of a one-on-one meeting must be shared equally with all interested or eligible Private Entities. For Transportation Projects sponsored by a Public Entity, the P3 Office can serve as a technical resource.

In addition to meetings with the interested or prequalified/shortlisted Private Entities, the P3 Office or Public Entity may issue drafts of some or all of the RFP documents, including Instructions to Proposers, Technical Provisions/Scope of Work and the draft Public-Private Transportation Partnership Agreement (or a Term Sheet). The P3 Office or the Public Entity may also make available technical and financial information relevant to the Transportation Project through an electronic data room and respond to requests for information and/or site inspections by Private Entities in support of their due diligence review of the Transportation Project. Information provided pursuant to such a request or opportunities for site inspections must be made available to all interested or eligible Private Entities. Private Entities will be encouraged to submit written comments and questions concerning these documents and the P3 Office or Public Entity will review and consider such input and potentially revise or adjust the documents in consideration thereof.

² None of this is to the exclusion of a Public Entity that may want to be considered for a P3 Transportation Project as permitted by the P3 Law.

The goal of the Industry Review process is to refine the RFP or Public-Private Transportation Partnership Agreement to attempt to address Private Entity concerns, to the extent possible, in order to maximize competition and incorporate innovative and/or cost-saving ideas. The Industry Review process can prove mutually beneficial to the P3 Office, Public Entity and Private Entities. Information and materials that may be provided and discussed during Industry Review Meetings may also include updated project information on preliminary engineering, Right-of-way acquisition, utility work, environmental clearances and the procurement schedule.

Following shortlisting/prequalification and/or the Industry Review process if either or both are utilized, the P3 Office and/or Public Entity may issue an RFP. The RFP will outline the minimum Proposal requirements and selection criteria.

7.1.2 Public Notice

The P3 Office or Public Entity will issue public notices of its procurements consistent with the P3 Law. The notice shall be given a reasonable time prior to the date set for the close of receipt of the proposals or statement of qualifications. The method of public notice may include any of the following:

- Electronic publication which is accessible to the general public, such as the Department website or eMarketplace;
- Advertisement as provided for in 45 Pa.C.S §306;
- Issuance of Requests for Proposals to Offerors on the mailing list of a Public Entity;
- Publication in a newspaper of general circulation; and/or
- Where prequalification is a requirement of submitting a proposal, notification to all Private Entities who have been prequalified by the Public Entity.

Copies of an RFP shall be made available to any interested person upon request to the P3 Office or Public Entity. The P3 Office and/or Public Entity may establish procedures for the distribution of an RFP, including the imposition of a fee to reimburse the P3 Office and/or Public Entity for the costs of photocopying and mailing.

7.1.3 Rights Reserved

Consistent with the P3 Law and policy established in this Implementation Manual, the P3 Office and/or Public Entity reserve all rights available by law and in equity in its procurement process, including, without limitation, the right to:

- modify the procurement process in its sole discretion to address applicable law and/or the best interests of the P3 Office or Public Entity and the Commonwealth;
- develop the project in any manner that it, in its sole discretion, deems necessary;
- issue an RFQ relating to a project approved by the P3 Board;
- modify all dates set or projected in the RFQ and RFP;
- reject any and all submittals, responses, Statement of Qualifications (SOQs) and Proposals, whether Solicited or Unsolicited, at any time;
- terminate evaluation of any and all Proposals, whether Solicited or Unsolicited, responses, and SOQs at any time;

- at the RFQ stage and prior to the initiation of an RFP, consult with any Responsible Offeror to include unique, or innovative aspects of their submitted documents into the solicitation;
- negotiate with a Responsible Offeror other than the apparent Best Value Responsible Offeror if negotiations with the apparent Best Value Responsible Offeror are unsuccessful or if financial close with the apparent Best Value Responsible Offeror does not occur;
- require confirmation of information furnished by a Responsible Offeror, require additional information from a Responsible Offeror concerning its SOQ and/or Proposal, require additional evidence of qualifications to perform the work described in the RFQ and RFP, including holding meetings and exchanging correspondence with the Responsible Offeror to seek an improved understanding of the SOQs and Proposals. If individual Responsible Offeror informational meetings are held, all Responsible Offerors submitting a responsive SOQ and Proposal shall be afforded an opportunity to participate in an individual Responsible Offeror informational meeting;
- add or delete Responsible Offeror responsibilities from the information contained in the RFQ or RFP;
- issue Addenda, Supplements and Modifications to an RFQ and/or RFP. In addition, revise and modify the evaluation factors or otherwise revise or expand the evaluation methodology for the SOQ or RFP at any time before the SOQ or RFP due date and for the Proposals at any time before the Proposal Due Date. If such revisions or modifications are made, the P3 Office and/or Public Entity shall circulate an Addendum to all prospective Offerors setting forth the changes to the evaluation criteria or methodology;
- cancel an RFQ or RFP in whole or in part at any time prior to the execution of a Public-Private Transportation Partnership Agreement while honoring any agreed upon compensation or stipends to proposers and having no further obligation thereafter;
- issue a new RFQ and/or RFP after withdrawal of original RFQ and/or RFP;
- determine whether to shortlist or prequalify any prospective Offeror responding to an RFQ;
- appoint Evaluation Committees to review SOQs and Proposals, make recommendations and seek the assistance of outside technical, financial and legal experts and consultants in SOQ and Proposal evaluation;
- establish protocols for remedying minor deficiencies within a specified period of time in a proposal of SOQ;
- disqualify any Offeror under an RFQ, an RFP or during the period between the RFQ or RFP for violating any rules or requirements of the procurement set forth in the RFQ, the RFP or in any other communication from the P3 Office and/or Public Entity;
- determine whether to issue a Notice to Proceed after execution of the Public-Private Transportation Partnership Agreement;
- determine whether to pursue TIFIA credit approval on behalf of the Private Entities;
- determine whether to seek an allocation for Private Activity Bonds (PAB) on behalf of the Private Entities;
- develop some or all of the project itself;

- disclose information contained in an SOQ/Proposal to the public as governed by the law and/or by the RFQ/RFP;
- exercise any other right reserved or afforded to the P3 Office and/or Public Entity under the RFQ/RFP or applicable law or in equity; or
- disqualify any Private Entity for any conflict of interest, including a violation of the State Adverse Interest Act, or other conduct or behavior manifesting a lack of responsibility.

Additional reservations of rights may be included in the solicitation documents for a project. Except as set forth in the Solicitation Documents, should the procurement process or negotiations be suspended, discontinued or terminated the Private Entity shall have no rights of recourse, including reimbursement of Private Entity review fee(s) or costs associated, directly or indirectly, with the Proposal development or presentations.

7.1.4 Ex- Parte Communications

No Offeror, prospective or actual, or representative thereof shall have any ex-parte communications during the procurement for a proposed project with any member of the P3 Board, Steering Committee, or with any of the P3 Office, Department and/or Public Entity's staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFQ, RFP or except as approved in advance by the P3 Office Director, Public Entity or designee, in such individual's sole discretion. The foregoing restriction shall not, however, preclude or restrict the Private Entity from communications with regard to matters unrelated to the RFQ or RFP or from participation in public meetings. Any Private Entity engaging in prohibited communications may be disqualified in the sole discretion of the P3 Office, Department and/or Public Entity. Additional requirements and limitations on communications may be included in the solicitation documents for a project. The P3 Office or Public Entity will provide a list in the Procurement Documents of agencies, organizations, stakeholders, consultants and contractors with whom Private Entities should not communicate.

Unless otherwise stated in the Procurement Documents, under no circumstance shall the P3 Office, Department, Public Entity and/or any other Commonwealth Agency be liable for or reimburse the costs incurred by the Private Entity whether or not they are selected, or if the procurement process is delayed, altered or terminated.

7.1.5 Disclaimers and Conditions

Except as expressly provided in the Procurement Documents, any and all information the P3 Office and/or Public Entity makes available to Private Entities shall be as a convenience to the Private Entity without representation or warranty of any kind.

7.1.6 Stipends

The P3 Office or Public Entity may compensate responsive and Responsible Offerors for a portion of the costs associated with the preparation of a proposal in response to an RFP. The

determination to offer a stipend and its amount will be determined on a project-by-project basis and will be based on the expected time required and expected complexity of the proposal as well as the Department or Public Entity's resources available for a stipend.

7.2 Request for Qualifications

7.2.1 Required Content for Response to RFQ

The P3 Office and/or Public Entity may issue an RFQ for a Transportation Project for the purpose of short listing/pre-qualifying Private Entities who are determined to have the qualifications, experience and approach required for successful development of the project. In response to an RFQ, Private Entities must submit an SOQ. The RFQ may require Proposers to submit information different from or in addition to such information referenced in this Implementation Manual which are outlined below:

- **Structure and Experience:** As a part of the SOQ, Private Entities will be required to provide information related to the structure of the proposed team, the background and experience of the Private Entity, individual team members, and key personnel with developing, designing, constructing, financing, operating and/or maintaining projects comparable to the Transportation Project, and their specific experience with similar projects.
- **Financial Capacity:** This includes a submittal of financial information from the Private Entity as determined by the P3 Office and/or Public Entity. The intent of this requirement is to ensure that the Proposer has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule and on budget.
- **Approach to Development:** Information that may be required, as part of the SOQ, includes a description of the approach to some or all of the development, design, construction, financing, operations and/or maintenance of the project for which the SOQ is submitted. Such required information may include a description of the Private Entity's conceptual plan to develop, design, construct, finance, operate and/or maintain the project, commitment of resources, risks and risk allocation, and the use of subcontractors and suppliers.

7.3 Request for Proposals

Upon making a determination of shortlisted/prequalified Private Entities for a particular project, the P3 Office and/or Public Entity may issue an RFP which will require the Offerors to provide a Proposal containing at least two basic components, a Technical Proposal, and a Financial Proposal. The P3 Office and/or the Public Entity may also issue an RFP without first issuing an RFQ. If the project delivery model is a Project Development Agreement (PDA), then components other than a Technical Proposal and Financial Proposal may be required as discussed in Section 7.4 of this Implementation Manual. The RFP may require Offerors to submit information different from or in addition to such information referenced in this Implementation Manual.

7.3.1 Technical Proposal

The P3 Office and/or prospective Proprietary Public Entity may require the Private Entity to provide such technical information regarding the project scope of work and technical requirements as the P3 Office and/or Public Entity deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, project management approach, schedule, phasing, quality control and assurance approach, and other information as appropriate for the project's development. The intent of the Technical Proposal is to provide assurance that the Development Entity selected has:

- a sufficient understanding of the project or desired service; and
- the Private Entity's ability to timely and efficiently deliver the project or service in a quality manner consistent with technical and contractual requirements.

7.3.2 Financial Proposal

The type and extent of financial documentation to be submitted as part of the Financial Proposal will depend on the delivery mechanism. The RFP may also require that the Private Entity update the financial information provided in the SOQ.

If the RFP and project scope require the Private Entity to finance any portion of or the entire project, the Financial Proposal must include a financial plan and a financial model. The nature of the project, the project delivery method and current market conditions will dictate:

- the contents and level of detail of the financial plan;
- whether the Financial Proposal is fully or partially committed; or
- whether conditions may be included by the Proposer.

Requirements for a financial plan may require the Private Entity to:

- identify the financial institution(s) involved;
- provide a description of senior debt finance, mezzanine debt finance, equity, subordinated debt, any other forms of finance; Identify investors, lead arrangers, lead managers and/or underwriting banks and/or equity providers that have given indications/commitments;
- describe the type and purpose of each funding source and facility;
- describe the proposed steps and timeframes for reaching financial close;
- provide specific information for each separate bank, loan facility, or other debt instrument such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts, interest rate, any proposed hedging arrangements in respect of interest rates, average life of debt, due diligence, and timetables; and/or
- at the option of the Proprietary Public Entity, provide a preliminary rating letter from at least one Nationally Recognized Statistical Rating Organization (NRSRO) with demonstrated expertise in assessing the credit quality of Public-Private Transportation Projects. The preliminary rating letter should indicate that the senior debt obligations

of the proposed Transportation Project would be rated in at least the lowest investment grade category, e.g., BBB-, Baa3 or similar grading.

The RFP will provide details regarding requirements for the financial plan and financial model portions of the Financial Proposal.

Where possible and financially feasible, the P3 Office and/or Public Entity will seek Proposals that minimize the use of public funds as well as the creation of State-supported debt. If a Proposal including public or private debt is submitted, then the RFP may require that the Proposal, to the extent possible, identify the amount of public funds required and specify the project-level approvals by the P3 Office, Department, Public Entity, private lending institutions and ratings agencies. If a Public-Private Transportation Agreement is executed for a Transportation Project requiring public funds or public debt from a Commonwealth Agency, this may require the Transportation Project to be listed in the Commonwealth's Capital Budget.

7.4 Evaluation and Selection Process

When all responsive Proposals have been evaluated, the P3 Office or Public Entity may, at its sole discretion, request Best and Final Offers (BAFOs) from the Private Entities. Once an apparent Best Value Proposer is selected, the P3 Office or Public Entity may enter into negotiations with that Proposer for a Department sponsored Transportation Project. If the Department is the Public Entity, upon completion of satisfactory negotiations and the Secretary's approval, the P3 Office will execute the Public-Private Transportation Partnership Agreement. For Transportation Projects sponsored by a Public Entity, the Public Entity may enter into negotiations with the Private Entity and upon satisfactory completion of negotiations seek approval by its governing Board of the Public-Private Transportation Project Agreement. The P3 Office may be used as a resource to support the negotiations of the Public Entity.

7.4.1 Evaluation Criteria

Proposals for P3 Transportation Projects are to be solicited through a request for proposals (RFP) issued by the Public Entity. Proposals must be evaluated on the basis of pre-established criteria with assigned weights. While the P3 Office reserves the right to develop an evaluation approach tailored to each Transportation Project, it is anticipated that most Transportation Projects will utilize a Best Value evaluation methodology.

As part of the evaluation process, the P3 Office and/or the Public Entity will conduct an evaluation of SOQs and Proposals using any of the criteria listed below. The P3 Office and/or Public Entity may choose to use a subset of the criteria or place more weight on one or more factors depending upon the scope of the Transportation Project and/or the type of procurement:

- cost;
- price;
- financial commitment;
- innovative financing;
- bonding;
- technical, scientific, technological or socioeconomic merit;

- financial strength and viability;
- design, operation and feasibility;
- public reputation, qualifications, industry experience and financial capacity of the Private Entity;
- ability of the Transportation Project to improve economic growth, to increase capacity or to expand an existing Transportation Facility;
- the compatibility of the Proposal with existing local and regional land use plans;
- the commitment of local communities to approve land use plans in preparation of the Transportation Project;
- the reasonableness of the Offeror's proposed project scope and schedule assumptions and proposed receipt of public funds, if any, based on a review of applicable Federal and Commonwealth requirements; and
- other factors deemed appropriate by the P3 Office and/or the Public Entity.

The P3 Office and/or the Public Entity will determine the relative importance of each evaluation factor and identify members of the Proposal evaluation committee. If the Public Entity is a Commonwealth Agency, the P3 Office is required to invite its Comptroller to participate in the evaluation as a non-voting member of any evaluation committee. No individual who has been employed by the Private Entity submitting an Unsolicited Proposal within the last two years may participate in the evaluation of proposals.

As part of the evaluation process of Proposals in response to a RFP, the P3 Office and the Public Entity may use the findings of previous Best Value Analyses as reference points for determining a Best Value Proposal.

7.5 Negotiations

The P3 Office and/or Public Entity may engage in negotiations regarding project elements, project scope, risk allocations, price, project financing, financial terms, P3 terms, technical requirements and other matters with the Proposer offering the apparent best value. The P3 Office and/or Public Entity should not disclose the contents of any Proposal to competing Private Entities during the negotiation and selection process. As may be provided in the Procurement Documents, the P3 Office and/or Public Entity may discuss an acceptable or potentially acceptable Proposal with the Private Entity to assess that Proposer's ability to meet each requirement of the procurement.

If at any point in negotiations, it appears to the P3 Office and/or Public Entity that the apparent highest ranking Best Value Proposal will not provide the overall best value or that the parties will be unable to reach agreement, the P3 Office and/or Public Entity may suspend or terminate negotiations with the apparent Best Value Proposer and enter into negotiations with the Private Entity submitting the next highest ranking best value proposal. This process may continue until the P3 Office and/or Public Entity reaches an agreement acceptable to it or determines that it will not be able to do so. The P3 Office and/or Public Entity can cancel an RFQ or RFP at any time. The P3 Law provides Private Entities that are aggrieved by a selection under the negotiations process to file a protest or claim pursuant to 62 Pa.C.S Ch. 17 if the selection is made by a Commonwealth Agency. In the event the selection is made by a Public Entity that

is not a Commonwealth Agency, the aggrieved Private Entity may file a claim with the Court of Common Pleas where the Public Entity is located.

7.6 Project Development Agreement (PDA) Approach

If the procurement delivery model is a PDA, the Proposal contents will differ significantly from that required for other project delivery methods. In the case of a PDA, the Transportation Project has typically not advanced to a level where a defined technical approach and firm pricing and financing (debt or equity) may be proposed. Environmental approvals may not be in place, the alignment may not be set and the scope of work may not be defined.

As a result, the proposal for a PDA will generally focus on the Private Entity's:

- approach to undertaking the PDA scope of work;
- price or process for establishing a price for undertaking this scope of work;
- conceptual approach to developing the Transportation Project; and
- conceptual approach to financing the Transportation Project.

The P3 Office and/or Public Entity may also require the Private Entity to submit a proposed conceptual development schedule and approach, confirmation of financing alternatives for pre-development, information related to delivery options, preliminary engineering, environmental approvals and the public involvement process. Proposal requirements will be detailed in the RFP.

7.7 Contracting

Prior to developing, designing, constructing, financing and/or operating and maintaining a project, the Development Entity selected must enter into a Public-Private Transportation Partnership Agreement with the Department or Public Entity. Because of the unique nature of every project and the potential for a variety of P3 approaches and project delivery methods, it is anticipated that Agreements may differ significantly. For instance, an Agreement for a Design-Build-Finance project will be very different than an Agreement for a Concession or for a PDA. The Agreement will define the rights and obligations of the parties with regard to the project. The Department or the Public Entity will consider such policy, legal, financial and technical advice as it deems necessary or appropriate to successfully develop, structure and negotiate the Agreement. The Department or the Public Entity also may seek the advice and involvement of affected state, local or regional public entities during the negotiation process.

If the Transportation Project requires debt financing to facilitate its initial construction, then the Private Entity may be required to provide prior to the execution of a Public-Private Transportation Project Agreement, one or more rating letters from two NRSROs with demonstrated expertise in assessing the credit quality of Public-Private Transportation Projects indicating that senior debt obligations of the Transportation Project are rated in at least the lowest investment grade category e.g., BBB-, Baa3 or similar grading.

The P3 Law requires that, at a minimum and as applicable, a Public-Private Transportation Partnership Agreement shall include the following provisions:

1. a description of any planning, development, design, leasing, acquisition of interest in, financing, installation, construction, reconstruction, replacement, expansion, operation, maintenance, improvement, equipping, modification, enlargement, management, running and control of the Public-Private Transportation Project;
2. the term of the Public-Private Transportation Partnership Agreement;
3. the type of property interest or other relationship the Development Entity will have in or with respect to the Public-Private Transportation Partnership Agreement, including the acquisition of right-of-way and other property interests that may be required;
4. authorization for the Department/Proprietary Public Entity or its authorized representatives to inspect all assets and properties of the Public-Private Transportation Project and all books and records of the Development Entity relating to the Public-Private Transportation Project to review the Development Entity's performance under the Public-Private Transportation Partnership Agreement;
5. grounds for the termination of the Public-Private Transportation Partnership Agreement by the Parties;
6. procedures for the amendment of the Public-Private Transportation Partnership Agreement;
7. the rights and remedies available in the event of breach, default, or delay;
8. requirements for a Development Entity to provide performance and payment bonds, parent company guarantees letters of credit or other acceptable forms of security in an amount acceptable to the Department and/or the Proprietary Public Entity;
9. a requirement that ownership of the Transportation Facility acquired or constructed go to or remain with the Proprietary Public Entity;
10. standards for construction, maintenance and operation of the Public-Private Transportation Project if the activities are to be performed by the Development Entity;
11. standards for capital improvement or modification of the Public-Private Transportation Project if they are to be made by the Development Entity;
12. standards relating to how payments, if any, are to be made by the Proprietary Public Entity to the Development Entity, including Availability Payments, Performance Based Payment and payments of money and revenue sharing with Development Entity;
13. standards relating to how the parties will allocate and share management of the risks of the Public-Private Transportation Project;

14. standards relating to how the Parties will allocate costs of development of the Public-Private Transportation Project, including any cost overruns;
15. standards relating to damages to be assessed for nonperformance, specifying remedies available to the Parties and dispute resolution procedures;
16. standards relating to performance criteria and incentives;
17. a requirement that upon termination of the Public-Private Transportation Partnership Agreement, a Transportation Facility that was the subject of the Public-Private Transportation Partnership Agreement must be in a state of proper maintenance and repair and shall be returned to the Proprietary Public Entity in satisfactory condition at no further cost to the Proprietary Public Entity;
18. provisions for law enforcement related to the Public-Private Transportation Project;
19. an obligation of the Development Entity to offer employment to any employee of the Proprietary Public Entity who would lose employment due to the execution of the Public-Private Transportation Partnership Agreement and who is in good standing at the time of execution of the Public-Private Transportation Partnership Agreement, including salary, retirement, health and welfare benefits which are substantially identical to the benefits received by the employee immediately prior to the execution of the Public-Private Transportation Partnership Agreement for the term of the collective bargaining agreement of those employees in effect. An employee of the Proprietary Public Entity who does not accept employment with the Development Entity shall be reassigned to an equivalent position without loss of seniority, within a worksite in as close proximity to the Public-Private Transportation Project as feasible. Nothing in this provision shall impair provisions related to furlough and layoffs of the collective bargaining agreement of those employees in effect; and
20. other terms and provisions as required under the P3 Law or agreed to by the Development Entity and the Proprietary Public Entity.

See 74 Pa.C.S. § 9110(a).

The P3 Law's list of required provisions is not exclusive. A Development Entity and the Proprietary Public Entity are free to include other terms and conditions in their P3 Agreement.

7.8 Key Action Items: Procurement

- Develop procurement documents
- Conduct Industry Review Meetings, as appropriate
- Issue the RFQ
- Evaluate responses and short list qualified Offerors
- Issue the RFP

- Evaluate proposals
- Select preferred Responsible Offeror
- Undertake negotiations
- Execute Public-Private Transportation Partnership Agreement

8. P3 LAW REQUIREMENTS

8.1 Optional User Fees

The P3 Law prohibits mandatory user fees as part of a Transportation Project but allows for the use of Optional User Fees – user fees imposed only on individuals who select optional means to transit the transportation facility, such as limited access lanes or similar programs that allow individuals multiple means to transit the same transportation facility.

8.1.1 Optional User Fee Contractual Requirements

If a Transportation Project will include Optional User Fees, the contract must include language that authorizes the collection of Optional User Fees, tolls, fares, or similar charges. A P3 agreement with the inclusion of Optional User Fees shall include provisions that: (1) specify the technology to be used in the P3 agreement; (2) establish how the revenues will be shared from the charges; (3) govern enforcement of optional electronic tolls; (4) establish payment collection standards (including enforcement); and (5) in the event an operator of a vehicle fails to pay the optional toll at any location in the P3 Transportation Project, where optional tolls are collected by means of electronic or other automated form of collection, the collection provisions of 74 Pa.C.S. § 8117 shall apply except that the Development Entity shall possess all of the rights, roles, limitations and responsibilities of the Pennsylvania Turnpike Commission.

8.2 Disputes

The P3 Law includes a limited waiver of the sovereign immunity of Public Entities for disputes arising out of a contract for a P3 Transportation Project. Development Entities may bring claims against Proprietary Public Entities that are subject to the Commonwealth Procurement Code in the Commonwealth’s Board of Claims in accordance with the Procurement Code’s requirements for such a proceeding. Claims where the Proprietary Public Entity is a municipal authority are governed by the procurement law applicable to the authority.

As part of the Public-Private Transportation Partnership Agreement, a Proprietary Public Entity can agree to allow the Development Entity to also seek specific performance of the Proprietary Public Entity’s obligations under the contract.

8.3 Conflicts of Interest and Other Considerations

The P3 Law, 74 Pa.C.S. § 9120, captioned “Adverse Interests,” sets the boundaries for Private Entities regarding activities that do or would qualify them as “state advisors” or “consultants” under the State Adverse Interest Act, 71 P.S. §§ 776.1 – 776.8. A Private Entity that is otherwise a state advisor or consultant is not precluded from preparing or submitting a response to a request for proposals or Transportation Projects under the P3 Law; participating in any activity with the Department relating to the same; negotiating or entering into a contract for

any resulting Transportation Project; or engaging in other action taken in furtherance of the purposes of the P3 Law.

Private Entities which submit a response to a request for proposals for Transportation Projects, or advise or consult for another Private Entity on its submission to the Department, are prohibited from consulting or providing advice to the Department on its review or approval of the submission. The identical restrictions apply to the Department's review or approval of responses submitted directly to the P3 Board.

8.4 Applicability of Other Laws

The P3 Law, 74 Pa.C.S. § 9113, provides that the Pennsylvania Vehicle Code, other state laws and local ordinances all apply to highways, bridges, tunnels and similar such public-private transportation facilities for use by motor vehicles to the same extent they would apply if the facility was not part of a Transportation Project. Likewise, police and other law enforcement officers have the same authority on all such facilities within their jurisdiction, regardless of whether they are part of a Transportation Project. The extent to which law enforcement services are to be provided for any facility and how the cost of such service, if any, will be accounted for, must be addressed in the Public-Private Transportation Partnership Agreement.

Taxation of the Development Entity is addressed in the P3 Law, 74 Pa.C.S. § 9115. As a general rule, to the extent that any political subdivision has a tax in place prior to September 3, 2012, that applies to revenue or Optional User Fees received by a Development Entity from a Transportation Project, those revenues and Optional User Fees remain subject to the tax including any future increases in the applicable rates. Taxes enacted by political subdivisions after September 3, 2012, cannot be imposed on the revenues or Optional User Fees received by a Development Entity pursuant to a Public-Private Transportation Partnership Agreement.

Real property involved in a Transportation Project is not subject to state or local realty transfer taxes under the Local Tax Enabling Act or the Tax Reform Code of 1971 or any successors to those statutes. All property used in connection with a Transportation Project is considered to be public property and therefore exempt from ad valorem property taxes and special assessments levied by the state or any political subdivision.

Under the P3 Law, 74 Pa.C.S. § 9116, the exercise of the power of eminent domain to acquire property for a Public-Private Transportation Project is deemed a taking for a public purpose.

The Commonwealth Procurement Code, 62 Pa.C.S. §§ 101-2311, generally does not apply to agreements for Transportation Projects. Section 9119(b) of the P3 Law, however, sets forth a half-dozen discrete elements of the Procurement Code which do apply if a Commonwealth agency is a party to the agreement; those elements include provisions relating to reciprocal limitations, debarment and suspension, approval of accounting systems, plant inspection, the Commonwealth agency's right to audit records relating to the transaction, retention of procurement records and legal and contractual remedies.

In addition to the limitations on the applicability of the Procurement Code, the P3 Law, 74 Pa.C.S. § 9119, provides that “all provisions of laws related to the development, construction, operation or financing of a transportation project in effect on the date the Public-Private Transportation Partnership Agreement is fully executed shall apply” to the agreement. The Commonwealth Separations Act and the Pennsylvania Prevailing Wage Act are expressly identified as being among those laws.

EXHIBITS

Exhibit A: P3 Law
74 Pa.C.S. §§ 9101-9124

Exhibit B: Sample Resolution of the P3 Board

WHEREAS, the Pennsylvania Public-Private Transportation Partnership (“P3”) Board met on [Date]; and

WHEREAS, a quorum of the Board was present; and,

WHEREAS, the Commonwealth of Pennsylvania, Department of Transportation’s (“PennDOT”) P3 Office recommended approval of the presented P3 Project, [name]; and

WHEREAS, the proposed P3 Project entails the following: [brief description of the Project]; and

WHEREAS, prior to the proposal of the [Project Name] to the P3 Board, the Department developed an analysis, which contained, at a minimum, the following information:

- (i) The anticipated location of the proposed transportation project.
- (ii) The type of transportation facility or transportation-related service to be improved.
- (iii) The estimated costs of the proposed transportation project to the public entity.
- (iv) The estimated length of the public-private transportation partnership agreement.
- (v) The potential social, economic and environmental impacts of the proposed transportation project.
- (vi) If the proposed transportation project proposes an Optional User Fee, include the estimated amount for each user group and type of user fee as described under section 9110(f) (relating to public-private transportation partnership agreement).
- (vii) Applicable Federal and State laws.
- (viii) Alternative courses of action to improve the transportation facility or transportation-related service without a public-private transportation partnership and the associated risks of improving the transportation facility or transportation-related service with a public-private transportation partnership; and

WHEREAS, the Department posted a copy of the analysis on the Department's publicly accessible website, submitted the analysis to this P3 Board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives; and

WHEREAS, the Department transmitted notice of the analysis to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin for 60 days prior to any action by the P3 Board; and

WHEREAS, the Department collected the public comments from the proposed transportation project during a public comment period, which continued for a period of not less than 30 days; and

WHEREAS, the Department posted a copy of all submitted comments and a summary of the Department's analysis on the Department's publicly accessible website; and

WHEREAS, the Department provided the submitted comments and summary to the P3 Board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives; and

WHEREAS, [any additional information related to optional tolling fees or any other project-specific provisions]; and

WHEREAS, the P3 Board finds that the proposed transportation project is in the best interests of the Commonwealth.

BE IT RESOLVED, that the Department presented a P3 project – [title of proposed project] that underwent a Department analysis and which sought public comments for a period of no less than thirty days.

BE IT RESOLVED, that the [P3 Board unanimously or a majority of the P3 Board] approved the [title of project] to proceed using [insert language regarding the appropriate contracting P3 delivery model], as defined in Act 88 of 2012 and following the process as delineated in the PennDOT P3 Implementation Manual.

[Name – the Secretary of Transportation (or a designated employee)]

[Name – the Secretary of the Budget (or a designated employee)]

[Name – gubernatorial appointee]

[Name – legislative appointee designated by the Majority Leader of the Senate]

[Name – legislative appointee designated by the Minority Leader of the Senate]

[Name – legislative appointee designated by the Majority Leader of the House of Representatives]

[Name – legislative appointee designated by the Minority Leader of the House of Representatives]

It is hereby certified that the foregoing action was duly taken by the P3 Board on this _____ day of [Month] 20[Year], in accordance with the P3 Law, 74 Pa.C.S. 9101-9124.

IN WITNESS WHEREOF, I hereunto set my hand on this _____ day of [Month] 20[year].

[name]
Secretary, Pennsylvania Department of Transportation
Chair – Pennsylvania Public-Private Partnership Board
